

Message Text

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ORIGIN EB-07

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NSAE-00 NSC-05 PA-01 AID-05 CIEP-01 SS-15 STR-04

TAR-01 TRSE-00 USIA-06 PRS-01 SP-02 OMB-01 XMB-02

SAM-01 /096 R

DRAFTED BY EB/ORF/FSE:LBUTCHER; L:SSCHWEBEL; -

APPROVED BY EB/ORF:JLKATZ

EB/IFD/OIA:DSTEBBING

EB/ORF/FSE:SWBOSWORTH

EUR/RPE:ASENS

COMMERCE:JLAMONT

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P 170132Z JUL 75

FM SECSTATE WASHDC

TO AMEMBASSY LONDON PRIORITY

CONFIDENTIAL STATE 168231

E.O. 11652: GDS

TAGS: ENRG, UK

SUBJECT: NORTH SEA OIL: PETROLEUM AND SUBMARINE
PIPELINES BILL

REF: A: LONDON 10564; B: LONDON 10370

1. WE SHARE YOUR CONCERN WITH PENDING UK LEGISLATION AND CONCUR WITH STEPS TAKEN BY EMBASSY THUS FAR. OUR CONCERN CENTERS UPON NEGATIVE IMPACT ON INVESTMENT CLIMATE AND UK ENERGY PRODUCTION WHICH MIGHT RESULT FROM ABSENCE OF PROVISION FOR COMPENSATION, APPEAL, AND ARBITRATION IN AUTHORITY GRANTED SECSTATE FOR ENERGY TO CONTROL DEVELOP-
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MENT AND DEPLETION DECISIONS.

2. WE LEAVE TO EMBASSY'S JUDGEMENT MANNER IN WHICH THESE CONCERNS CAN BEST BE CONVEYED TO HMG. RECOGNIZING THAT

DEVELOPMENTS WILL BREAK RAPIDLY AFTER PASSAGE OF BILL BY COMMITTEE, WE WOULD, IF POSSIBLE, HOPE TO RECEIVE ADVANCE NOTIFICATION IF EMBASSY DECIDES TO PRESENT DIPLOMATIC NOTE.

3. EMBASSY CAN STATE THAT PROPOSED LEGISLATION COULD RAISE A QUESTION ABOUT ITS COMPATIBILITY WITH INTERNATIONAL LAW RESPECTING REGULATION AND TAKING OF FOREIGN PROPERTY AND

CONTRACTUAL RIGHTS. HOWEVER, YOU SHOULD NOT SQUARELY MAINTAIN THAT THE ENACTMENTS CONTEMPLATED, OR THEIR IMPLEMENTATION, WOULD CONSTITUTE A VIOLATION OF INTERNATIONAL LAW. AS YOU KNOW, THERE ARE WIDE DIFFERENCES OF VIEW INTERNATIONALLY ABOUT THE EXTENT TO WHICH A GOVERNMENT MAY, CONSISTENT WITH CUSTOMARY INTERNATIONAL LAW, ENACT REGULATIONS, WHICH ARE NEITHER ARBITRARY NOR DISCRIMINATORY, WHICH ADVERSELY AFFECT ALIEN PROPERTY AND CONTRACTUAL RIGHTS. OUR REVIEW OF THE PROBLEM SO FAR LEADS US TO CONCLUDE THAT, IN THIS CASE, IT IS NOT CLEAR THAT THESE REGULATIONS WOULD AMOUNT TO A TAKING OF PROPERTY OR CONTRACTUAL RIGHTS THAT REQUIRE COMPENSATION UNDER INTERNATIONAL LAW, OR THAT THE PROPOSED ENACTMENTS OTHERWISE CONSTITUTE A VIOLATION OF INTERNATIONAL LAW.

4. AS EXPRESSED PARA 3 LONDON 10564, WE THINK IT APPROPRIATE TO RAISE THE QUESTION OF WHETHER HMG'S PROPOSED LEGISLATION WOULD COMPORT WITH USG AND HMG VIEWS REPEATEDLY EXPRESSED IN UN FORA THAT INTERNATIONAL INVESTMENT AGREEMENTS SHALL BE OBSERVED, E.G., AT LAST SESSION OF UNGA, HMG JOINED USG AND 12 OTHER STATES IN PROPOSING AN AMENDMENT TO DRAFT CHARTER OF ECONOMIC RIGHTS AND DUTIES OF STATES STATING THAT EVERY STATE HAS THE RIGHT "TO ENTER FREELY INTO UNDERTAKINGS RELATING TO THE IMPORT OF FOREIGN CAPITAL WHICH SHALL BE OBSERVED IN GOOD FAITH".

5. WE DO NOT BELIEVE THAT THE ISSUE OF COMPENSATION FOR POSSIBLE VIOLATION OF LICENSES SHOULD BE EMPHASIZED BY
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THE EMBASSY. PROVISION IN BILL ALLOWING FOR COMPENSATION WOULD PROBABLY NOT COMPLETELY ALLAY INVESTOR CONCERNS AND EMBASSY HAS INDICATED STRONG DISPOSITION OF HMG AGAINST COMPENSATION (PARA 7 REF A). OUR PRIMARY OBJECTIVE SHOULD BE TO PERSUADE HMG TO RECONSIDER LEGISLATION WITH A VIEW TOWARD ENSURING THAT IT DOES NOT BECOME A CONSTRAINT ON NORTH SEA DEVELOPMENT. KISSINGER

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